* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: November 10, 2006
Delivered on: July 27, 2007.

\+ **REVIEW PETITIONER NO. 328/2005 IN W.P.(C) 745/1987**

VINOD KAPUR & ORS. ..... Petitioners
Through Mr. N.S. Vashisht, Advocate

versus

UNION OF INDIA & ORS. ..... Respondents
Through Mr. Jhunjhun Sarkar, Mr. Sachin Navani for L&B and LAC

CORAM:
HON'BLE MR. JUSTICE T.S. THAKUR:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT:

1	Whether reporters of local papers may be allowed to see the judgment.?	yes
2.	To be referred to the Reporter or not?	yes
3.	Whether the judgment should be reported in the Digest?	yes

Mr. Justice S. Ravindra Bhat:

1. By these proceedings, review of the judgment and order of this Court dated 17th December, 2004, in which the writ petition No. 745/86 was disposed off, has been claimed.

2. In the writ petition a declaration under Section 6 of the Land Acquisition Act

dated 07.06.85 was questioned on various grounds. The suit lands had been notified under Section 4(1) of the Act on 25.11.80. This Court had considered the averments on behalf of the petitioner and delivered final judgment dismissing the petition. The present review petition is premised on the ground that the petitioners' predecessors-in-interest had filed objections under Section 5-A of the Act which was not brought to the notice of the Court. It was contended that this circumstance amounted to sufficient cause to enable this Court to review the judgment and order dated 07.12.04,s dismissing the writ petition.

3. The relevant averment in the review petition, which is the mainstay of the entire review proceeding reads as follows:

> "*That the above petition came up for final disposal on 17.12.04 along with other writ petitions before this Hon'ble court when the same was dismissed by this Hon'ble Court with the other listed Writ Petitions. It is pertinent to mention here that the petitioners in para 8 of the above said Writ Petition have wrongly mentioned that the petitioners along with other land owners within the revenue estate of village Chattarpur who were also aggrieved by the Section 4 notification, filed there objection under Section 5 of the Land Acquisition Act, to which no personal hearing to the objectors have been afforded by the Collector and no report in respect of objections of the objector have been forwarded to the Government of India. It is necessary and in the interest of justice here to point out that the predecessor and interest i.e. Mr. R.L. Sahni filed his 5-A objection with regard to the land in question and inadvertently at the time of filing of the above said Writ Petitions the same could not be highlighted which resulted in dismissal of Writ Petitions.*"

4. Mr. N.S. Vashisht, learned counsel on the basis of the above averments submitted that the petitioner was entitled to the benefit of declaration given by this Court in the judgment dated *Balakram Gupta -v- Union of India* 37 (1989) DLT 150 (referred to in the main judgment as "*Balakram-II*"). A Division Bench of this Court had, by that decision, invalidated the acquisition on the ground of non-compliance with the principles

of natural justice in regard to hearing and disposing objections to land acquisition, so far as the petitioner/objectors were concerned.

5. Mr. N.S. Vashisht, learned counsel submitted that at the time of filing the writ petition, the relevant averment in Paragraph 8 was that no objection under Section 5-A had been preferred after Notification under Section 4(1) was issued. Counsel contended that this was an inadvertent omission because at that time, the predecessors in interest who had title to the suit lands, had in fact preferred objections. Counsel contended that the mistake in pleadings ought not to visit the litigant with harsh consequences and that the present petitioner was entitled to the declaration in *Balakram-II* as he undisputedly fell within the class of litigants legitimately entitled to be called as objectors to the acquisition.

6. The review proceeding was opposed by the respondents. It was submitted that the petitioner was expected to support his case in all material particulars and aver all the grounds that should have been urged, at the time he approached the Court. If indeed the petitioner was entitled to be treated as an objector, he would have said so, in the first instance, in 1986. He chose not to do so for the period of 18 years when the proceedings were pending. He only woke up after the judgment was delivered and claimed that his predecessor was an objector in the review filed before this Court. Counsel also contended that apart from this, the review should not be entertained as it is belated.

7. The judgment of this Court disposing off the petition was rendered in a batch of cases where one of the contentions raised was that the declaration of law in *Balakram-II* operated as a judgment *in rem,* thus, entitling all land owners whose lands were notified

for acquisition to relief. This Court had negatived the contention on the basis of three rulings of the Supreme Court, namely, *Abhay Ram -v- Union of India* 1995 (5) SCC 421; *Delhi Administration -v- Gurdip Singh Uban* 1999 (7) SCC 44 (hereafter called "*Uban-I"*) and *Delhi Administration -v- Gurdip Singh Uban* 2000 (7) SCC 296 (hereafter called "*Uban-II*"). In those judgments, the Supreme Court clearly ruled that the declaration as to invalidity of the Notifications enured only in favour of the petitioners before the Court, in Balak Ram-II.

8. The facts of this case would disclose that the Notification in question was published on 25.11.1980. Initially, the question raised was whether the validity of that period lapsed automatically after three years. That doubt was cleared by a Full Bench ruling in *Balakram-I (Balakram Gupta -v- Union of India* Air 1987 Delhi 239). The respondents proceeded to issue a declaration under Section 6 of the Land Acquisition Act on 07.06.85. The petitioner admittedly was not the owner of the lands. Neither the averments in the writ petition nor in the review petition furnish any details as to when the present petitioner acquired title. Admittedly, the present petitioner did not file any objections under Section 5-A; no documentary evidence is forthcoming in the review petition. The only basis on which relief has been claimed now is that its predecessor-in-interest had preferred an objection under Section 5-A.

9. It is a well settled law that review jurisdiction is available to a litigant where he can satisfy the Court that despite due diligence he could not secure material evidence or documents which would have otherwise altered the decision of the Court. A review is also maintainable if new evidence comes to light which has material bearing on the

decision. In the present case neither of these prerequisites have been satisfied. The circumstances urged in support of the claim for review are those which were always available to the petitioner. He did not choose to urge them in the petition or during the course of the proceedings.

10. In view of the highly circumscribed scope of the review proceedings, we are satisfied that no plea has been made out for exercise of such jurisdiction. Accordingly, the petition is dismissed as being devoid of merits. All interim orders are hereby vacated.

(RAVINDRA BHAT)
JUDGE

July 27, 2007.

(T.S. THAKUR)
JUDGE